

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0395
RESPONSIBLE OFFICER
SALES TAX
For Tax Period 2002-2004

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Issue

I. Sales Tax -Responsible Officer Liability

Authority: IC § 6-2.5-9-3; IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate sales taxes against him as a responsible officer.

Statement of Facts

The taxpayer was a member of a limited liability corporation that operated a hotel and did not remit sales taxes to Indiana for the tax period 2002-2004. The Indiana Department of Revenue assessed the outstanding corporate sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was scheduled. The taxpayer failed to participate. This Letter of Findings is based upon the documentation in the file.

I. Sales Tax -Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The taxpayer first argued in his protest letter that he could not be held responsible because the business was organized as a limited liability corporation. The taxpayer errs in this conclusion pursuant to the statute assigning personal liability for unpaid corporate sales tax trust taxes to members of a business who had the duty to remit the taxes. The taxpayer was listed in the “Articles of Organization” filed with the Indiana Secretary of State as a managing partner of the limited liability corporation. As a managing partner, he was one of the persons responsible for the payment of the trust taxes to the state.

Secondly, the taxpayer argued that there were other persons with the responsibility to remit the trust taxes to the state. Responsible parties are jointly and severally liable for the trust taxes that were not remitted to the state. Therefore, even if there might have been others who were also responsible officers, the department has the authority to impose the corporate trust taxes against one responsible party.

Finding

The taxpayer’s protest is denied.

KMA/JMM/DK/06/04/04